IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-04-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE R. SUDHAKAR

WRIT PETITION NO.13767 OF 1999

K.C. Vasudevan
S/o. Appunni Kidav
Constable,
Central Industrial Security Force,
Dhansar, Dhanbad District,
Bihar State. .. Petitioner

Vs.

1. The Director General,
   Central Industrial Security Force,
   Ministry of Home Affairs,
   Block No.12, CGO Complex,
   Lodhi Road, New Delhi 110 003.

2. The Deputy Inspector General,
   Central Industrial Security Force
   (Southern Zone),
   Headquarters, Rajaji Bhavan,
   Besant Nagar, Chennai.

3. The Commandant,
   Central Industrial Security Force,
   Chennai Port Trust,
   Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus directing the respondents to refix the petitiner's pay for the period from the date of his dismissal from service, by granting notional increments upto the date of reinstatement and real increments thereafter by granting the benefits of revised pay scales under Pay Commission Recommendations, granting promotions to the posts of Head Constable and Assistant Sub-inspector from the respective dates on which petitioner's immediate juniors was promoted and pay all consequential arrears arising out of such fixation.

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For Petitioner : Mr.V. Ramasubramanian
For Respondents : Mr.S. Udhya Kumar, SCGSC

O R D E R

(The Order of the Court was made by P.K.Misra,J.)

Heard the learned counsels appearing for the parties.

2. Brief history is required to be narrated before deciding the question placed in the present writ petition.

Petitioner is serving under the third respondent as Constable. An order of suspension was passed on 5.7.1980 on the basis of certain allegations. Since, the petitioner had not signed the attendance register at the time when he was under suspension, another disciplinary proceeding was initiated and, on the finding that he had not signed the attendance register, the petitioner was dismissed from service by order dated 28.4.1984. At that stage, the petitioner filed W.P.No.15771 of 1992 in the High Court, which was decided by Shivraj V. Patil, J (as His Lordship then was) by order dated 6.12.1996. Since the question now raised depends upon fair interpretation of the said order, it is necessary to quote the entire order :-

> "... Having regard to the nature of the misconduct alleged and said to have been found and established, the penalty of dismissal of the petitioner from service was found excessive and grossly disproportionate. In this view, I wanted to know from the respondents whether lesser punishment could be imposed on the petitioner. Learned counsel for the respondents fairly submitted, if the court holds that the petitioner was guilty of the misconduct alleged and charges proved are maintained, the respondents are willing to reinstate the petitioner subject to imposition of some penalty, and further subject to the condition that the petitioner does not claim backwages.
>
> 2. Learned counsel for the petitioner submitted on instructions that the petitioner is ready and willing to forego backwages and he would be satisfied if he is reinstated in service with continuity of service. As to the penalty to be imposed, learned counsel for the respondents submitted that two increments may be withheld with cumulative effect. At this stage, learned counsel for the petitioner submitted that appropriate orders may be passed as considered. The petitioner has also filed an affidavit today in the Court stating that in the event of his reinstatement with continuity of service he shall not claim backwages. The said affidavit is placed on record.

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In the light of the submissions of the learned counsel for the parties, while maintaining the findings recorded against the petitioner to the effect that the charges were held proved against him, I pass the following order:-

(i) The petitioner shall be reinstated within a period of eight (8) weeks from today.

(ii) Instead of dismissal of the petitioner from service, two increments are withheld with cumulative effect. But with continuity of service."

3. After such order was passed, the petitioner was reinstated in service on 10.2.1997 and thereafter a pay fixation order was passed on 27.9.1997 on the basis of IV Pay Commission and subsequently on 20.1.98 on the basis of V Pay Commission. Subsequently, the petitioner made representation stating that his pay should be fixed by notionally taking into account the increments from the date of original order of dismissal and the actual order of reinstatement and to refix the pay. Since no order was received by the petitioner, the present writ petition has been filed.

4. The main contention of the petitioner is to the effect that as per the final order passed in W.P.No.15771 of 1992 by the Madras High Court, the only punishment required to be imposed was withholding of two increments with cumulative effect, but the effect of the present order by ignoring the interregnum period, the petitioner was deprived of the increments for the entire period of 13 years. The petitioner further submitted that the learned single Judge on the earlier occasion had made it clear that punishment was only stoppage of two increments and there should be continuity of service. In such view of the matter, according to the petitioner, the pay should have been fixed by notionally taking into account the increments for the interregnum period.

5. This submission of the petitioner is resisted by the counsel for the respondents. It is contended by him that since the petitioner had remained absent during the period in question till the date of reinstatement, it cannot be said that he would be entitled for increments and, therefore, his pay has been rightly fixed ignoring the increments for the said period. In support of his contention, he has relied upon the decisions of the Supreme Court reported in (2003) 2 SCC 212 (A.P.SRTC AND ANOTHER v. S. NARSAGOUD) and (2005) 6 SCC 36 (A.P. STATE ROAD TRANSPORT CORPORATION AND OTHERS v. ABDUL KAREEM).

6. We have heard the Counsels appearing for both the parties at length and gone through the relevant materials on record.

7. From the order passed by the learned single Judge on the earlier occasion, it is apparent that the learned Judge was

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clearly of the view that he punishment of dismissal for the alleged misconduct of not signing the attendance register, when the petitioner was under suspension, was disproportionate and therefore the order of dismissal is liable to be set aside.

8. As a matter of fact, the learned single Judge had referred to the submissions made by the counsel for the respondent at that stage that some penalty may be imposed and the petitioner may be reinstated in service subject to the condition that he will not claim backwages. Keeping in view the tenor the order of the learned single Judge on that occasion, we are of the considered opinion that the method now adopted by the Department cannot be accepted. Accepting such a proposition actually would amount to stoppage of 15 increments with cumulative effect instead of two increments with cumulative effect. Since the punishment itself was stoppage of two increments with cumulative effect, it is obvious that the person would be entitled to the benefit of notional increments after two years period was over from the date of reinstatement. It may also be clarified that even though actual reinstatement took place subsequent to the order passed in the writ petition, since there was a direction for continuity of service, in law, it must be taken that the person was reinstated from the date of dismissal, but he is not entitled to backwages from the date of dismissal till the date of actual physical reinstatement in view of the clear undertaking and submission by the affected party as reflected in the earlier order passed by the learned single Judge.

9. In (2003) 2 SCC 212 (A.P. SRTC AND ANOTHER v. S. NARSAGOUD), the employee under the Andhra Pradesh State Road Transport Corporation was guilty of misconduct of unauthorised absence on duty. On the basis of domestic inquiry, wherein the workman was found guilty, the management inflicted the punishment of removal from service. An Industrial Dispute was raised. The Labour Court held that no fault could be found with the disciplinary proceedings or the findings arrived thereunder. However, the Labour Court concluded that though the workman was guilty of the charges, he had been without employment during the period of absence and had suffered thereby and so the penalty of not providing backwages would be the appropriate penalty in the facts and circumstances of the case, while ordering for reinstatement with continuity of service, and ultimately the Labour Court directed the management to reinstate the workman with continuity of service but without backwages. When the matter came to the High Court, the High Court directed the Corporation to compute the periodical increments and to fix the wages payable to the workman after his reinstatement by taking into account the said increments. Such order of the learned Single Judge was confirmed by the Division Bench and the matter was taken to the Supreme Court by the management. The Supreme Court observed as follows:-

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"8. … The effect of the judgment of the learned Single Judge, upheld by the Division Bench and the Circular issued consequent upon the judgment of the High Court is that the employee being reinstated, in spite of having been held guilty of unauthorised absence from duty, continues to earn increments though there is no payment of wages for the period of absence. This results in an incongruous situation, submitted the learned counsel for the appellant.

> 9. We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."

Ultimately the Supreme Court set aside the order passed by the High Court.

10. In (2005) 6 SCC 36 (A.P. STATE ROAD TRANSPORT CORPORATION AND OTHERS v. ABDUL KAREEM), the very same question was involved in respect of another workman and after referring to the earlier decision and referring to the observation made in paragraph 9, which has already been extracted above, the Supreme Court has passed the similar order.

11. In our considered opinion, the two decisions relied upon by the learned counsel for the respondents are not applicable to the present case.

12. In the present case, the order of dismissal was not on account of any unauthorised absence but on account of the fact that the present petitioner had not signed the attendance register while he was under suspension. We have already extracted the order of Shivraj V. Patil, J. From the order, it is apparent that the High Court intended to inflict a punishment of stoppage of two increments and of course, the High Court had further observed that backwages would not be paid. However, we cannot persuade ourselves to hold that the High Court also intended to inflict the punishment, instead of being deprived of two increments apart from backwages, the

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petitioner would also be deprived of 13 further increments. The factual background in the two Supreme Court decisions being entirely different, in our view, the ratio of those decisions would not be applicable to the present case.

13. The writ petition is accordingly allowed in part to the extent indicated above and the Department is directed to refix the pay keeping in view the aforesaid observations. If the petitioner makes any further representation regarding his promotion, it will be considered on its own merit. There would be no order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

dpk

To

1. The Director General,
   Central Industrial Security Force,
   Ministry of Home Affairs,
   Block No.12, CGO Complex,
   Lodhi Road, New Delhi 110 003.

2. The Deputy Inspector General,
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   (Southern Zone),
   Headquarters, Rajaji Bhavan,
   Besant Nagar, Chennai.

3. The Commandant,
   Central Industrial Security Force,
   Chennai Port Trust,
   Chennai.

1 cc to Mr.S.Udayakumar, Advocate, Sr. 17691
1 cc to Mr.V. Ramasubramanian, Advocate, Sr. 17950

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